



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 6

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September 23, 2005

Re: Westbrook Health Services, Inc.
Case 6-RD-1568

Ms. Kathy Wolfe
722 Riverview Drive
Delmont, WV 26134

Dear Ms. Wolfe:

Your petition seeking an election among certain employees of Westbrook Health Services, Inc. has been carefully investigated and considered.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted and I am dismissing your petition for the following reasons:

Your petition was filed on August 30, 2005, seeking to decertify UFCW Local 400 as the collective-bargaining representative of the Employer's consumer assistant I and II classifications. The Union was certified by the NLRB on March 11, 2002, in Case 6-RC-12000 to represent those classifications of employees. The most recent collective-bargaining agreement between the Employer and Union expired on May 30, 2005 and the parties entered into an extension agreement which expired on August 31, 2005.

The investigation revealed that on August 29, 2005, the Employer and Union entered into an "Acknowledgement of Collective Bargaining Agreement." That Acknowledgement is a written agreement signed by both parties prior to the filing of the instant petition. It contains substantial terms and conditions of employment and by its terms encompasses the employees involved in the petition. That Acknowledgement serves as a bar to an election in the instant case since it meets the basic requirements set forth in Appalachian Shale Products Co., 121 NLRB 1160 (1958).

As to your concern about any need for prior ratification of the contract by the membership, which did not occur in the instant case, the Board has held that where ratification is a condition precedent to contractual validity by express contractual provision, the contract is ineffectual as a bar unless it is ratified prior to the filing of a petition. American Broadcasting Co., 114 NLRB 7 (1956); Kennebec Mills Corp., 115 NLRB 1483 (1956). For this condition to be operative, it must be express (emphasis supplied); otherwise prior ratification is not required. International Paper Co., 294 NLRB 1168 fn. 1 (1989). Herein, there is no express provision for prior ratification in the collective-bargaining agreement. On the contrary, the Acknowledgement of Collective Bargaining Agreement states, in pertinent part, ". . . While certain ministerial or other

acts may be taken in regard to the typing, copying, proof-reading, correction of clerical type errors, ratification by the unit members and/or other acts of a like or similar nature, such acts are neither conditions of nor incorporated into the collective-bargaining agreement (or this document) and are not, in any way, a part of either the collective-bargaining agreement or this document. Based on the foregoing, I am dismissing the petition.

Your Right to Obtain a Review of Dismissal Action: Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, any party may obtain a review of this action by filing a request for review with the Executive Secretary of the National Labor Relations Board at 1099 – 14th Street, NW, Washington, DC 20570-0001. A request for review may not be filed by facsimile. You may, however, file a request for review electronically via the Internet in accordance with instructions previously provided to the parties. Those instructions may also be found at the Agency's Internet website at www.nlrb.gov under "E-Gov". If you file a request for review, you must also send a copy to the other parties to this proceeding and to me in the same or faster manner as that used to serve the Board. Also, please note the following:

Request for Review Due date: The request for review must be received by the Executive Secretary for the Board in Washington, DC by the close of business at **5:00 p.m. EST (EDT)** on **October 7, 2005**. However, if you mail the request for review, it will be considered timely if it is postmarked no later than one day before the due date.

Extension of Time to File Request for Review: Upon good cause shown, however, the Board may grant special permission for a longer period within which to file a request for review. Any request for an extension of time may be filed in writing, by facsimile or electronically via the Internet, but must be received in Washington, DC no later than the request for review due date indicated above. A copy must be sent to each of the parties to this proceeding and to me in the same or faster manner as that used to serve the Board.

Request for Review Contents: The request for review must contain a complete statement setting forth the facts and the reasons that support your request for review of the decision to dismiss the petition. The request for review and any request for extension of time must include a statement as to the manner of service on the other parties to this proceeding and on me.

Very truly yours,

Gerald Kobell
Regional Director

See page 3 for parties receiving copies:

Westbrook Health Services, Inc.
Case 6-RD-1568

PARTIES RECEIVING COPIES:

cc:

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